IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4009 OF 2005

Ashok Leyland Finance Ltd. ....Petitioner
V/s.
Sanjay G. Dhere & Anr. ....Respondents

Ms.Shakuntala Joshi for the Petitioner.
Mr.Vijay Killedar for the Respondents.

CORAM : R.M. SAVANT, J.
DATED : 12TH JUNE, 2007.

P.C. :

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. This Petition impugns an order dated 14.2.2005 passed by the Additional Member, Motor Accident Claims Tribunal, Pune. By the said order, the Petitioner herein and Respondent No.2 herein have been made jointly and severally liable for the payment of Rs.25,000/- on account of no fault liability under Section 140 of the Motor Vehicles Act.

3. Such of the facts which are necessary to be cited are stated thus :-

. It appears that an accident took place opposite Paradise Residency on More Vasti to Bhosari Road, Pune in which Respondent No.1 received injuries. Respondent No.1 made an application for compensation before the M.A.C.T. on 16.2.2004. In the said application, an application under Section 140 of the Motor Vehicles Act was also filed which application came to be allowed by the impugned order dated 14.2.2005.

4. In so far as the present Petitioners are concerned, the said application was proceeded ex-parte, as it is the case of the Petitioners that they were not served. The Petitioners are financers of the vehicle in question of which Respondent No.2 is the owner. It is the case of the Petitioners that the liability, if any under Section 140 of the said Act cannot be fastened on them. The Petitioners have relied upon various documents which have been annexed to the Petition in support of their contention that they are not the owners. It is the contention of the Petitioners herein that if an opportunity is given, the Petitioners would be in a position to substantiate their case that they are not liable for any payment under no fault liability.

5. On the other hand, it is the case of Respondent No.1 - Claimant that from the documents annexed to the Petition, the ownership of the Petitioners can be proved.

6. It is an admitted position that the order passed is an ex-parte order and therefore, the material produced by the Petitioner has not been considered by the M.A.C.T. The liability is fasten solely relying upon a judgment of the Apex Court. In the absence of the relevant facts before the M.A.C.T., the applicability of the said judgment according to the learned counsel for the Petitioners is debatable. I find considerable merit in the submissions made by the learned counsel for the Petitioners.

7. In my view, since the order passed is an ex-parte order, the same would have to be set-aside and the matter have to be relegated back to the M.A.C.T. for considering the application filed by Respondent No.1 afresh taking into consideration the material that would be produced by the Petitioners. On such remand, the M.A.C.T. to try and decide the said application under Section 140 of the Motor Vehicles Act within a period of two months from date. The Petitioner would be at liberty to produce such

material before the M.A.C.T. to substantiate its case.

8. Rule is accordingly made absolute in the aforesaid terms with the parties to bear their own costs.

(R.M. SAVANT, J.)